

**REMARKS**

Reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks is respectfully requested

By this Amendment, claims 22, 32, 32, 37, and 38 are amended, and claim 28 is canceled without prejudice or disclaimer. In addition, new claim 40 is added to secure an appropriate scope of protection to which Applicants are believed entitled. Support for the added claim is believed to be found at in least Figs. 1 and 3 of the present specification. Accordingly, claims 22-27 and 29-40 are pending in this application.

In response to the rejection of claims 22-25, 27-32, and 34-37 under 35 U.S.C. §102(b) over Fukushima (US 4,790,429), the claims are amended and believed to be patentable for the reasons discussed below.

As amended, independent claim 22 includes the features of canceled claim 28, wherein said receptacles include indicia indicating where a thumb and a forefinger of a user should be positioned for use. In addition, claim 22 is amended to define that this feature allows for substantially complete evacuation of the receptacle through the outlet. This feature is support in the specification at page 5, lines 19-24. Claim 22 is further amended to recite wherein the device is configured to be manipulated by a user in a one handed operation to dispense the substances (*see* page 5, lines 23-24, and page 7, lines 2-5).

Still further, claim 22 is amended to define that the device is configured to apply proportional amounts of two substances.

Notwithstanding the amendments to the claims that more clearly recite the claimed subject matter, Applicants respectfully submit that Fukushima fails to disclose separate outlets, but rather the outlets are part of the fold line.

Still further, claim 22 recites wherein the outlets “converge towards the line of the fold,” and whereby “when the device is folded about said line of fold, said outlets are superposed for dispensing and mixing the substances when the receptacles are squeezed.” (Emphasis added). Fukushima fails to disclose these features. Figs. 1 and 2 of Fukushima clearly depicts wherein

outlets 7 do not converge, and indeed, are disposed at different positions on the fold. Applicants respectfully submit, therefore, that the outlets of Fukushima cannot be superimposed for dispensing and mixing, as recited in claim 22.

Furthermore, contrary to the Examiner's assertion, Fukushima fails to disclose the feature of the indicia indicating where a finger and thumb of a forefinger of a user should be positioned for use. In Fukushima, a user could place a forefinger and thumb proximate to the fold, which would hinder substantially complete evacuation of the receptacle through the outlet as in the present invention. Accordingly, the present invention provides an advantage over Fukushima.

A rejection based on 35 U.S.C. §102 requires every element of the claim to be included in the reference, either directly or inherently. Accordingly, because Fukushima does not disclose, teach or suggest each and every feature recited in claim 22, Applicants recited feature is distinguished over Fukushima and therefore the rejection of claim 1 under 35 U.S.C. §102(b) is improper. Applicants respectfully submit, therefore, that independent claim 22 is patentable over Fukushima.

Claims 23-25, 27-32, and 34-37 depend from independent claim 22 and are likewise patentable over Fukushima at least for their dependence on claim 22 an allowable base claim, as well as for additional features they recite. Withdrawal of the rejection over Fukushima is respectfully requested.

Claims 26, 33, 38, and 39 stand rejected under 35 U.S.C. §103(a) over Fukushima in view of one or more of Weisberg (US 4,176,567) and Bollmeier (US 3,074,544). Applicants respectfully submit that, as discussed above, independent claim 22 is patentable over Fukushima and no allowable combination of the applied references remedies the deficiencies of Fukushima as regarding claim 22.

Therefore, Applicants respectfully submit that claims 26, 33, 38, and 39 depend variously from claim 22 and are likewise patentable over the asserted combination of references at least in view of their dependence on an allowable base claim.

New claim 40 is added to further recite wherein "said outlets are disposed such that one of said outlets on one side of the line of fold is a transposed minor image of the other outlet on the

other side of the line of fold and said outlets are substantially equidistant from the line of fold.” The applied references, singularly or in allowed combinations fail to disclose this feature. Figs. 1 and 2 of Fukushima clearly depicts wherein outlets 7 are disposed at different positions on the fold, and are not disposed such that one outlet is positioned as a mirror image of the other outlet on the other side of the line of fold.

### **Conclusion**

All objections and rejections having been addressed, it is respectfully submitted that the present application should be in condition for allowance and a Notice to that effect is earnestly solicited.

The Examiner is invited to telephone the undersigned, Applicants' attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

**LOWE HAUPTMAN HAM & BERNER, LLP**

  
Benjamin J. Hauptman  
Registration No. 29,310

1700 Diagonal Road, Suite 300  
Alexandria, Virginia 22314  
(703) 684-1111  
(703) 518-5499 Facsimile  
Date: May 18, 2009  
BJH:ERM/tal